

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

LEANDRE R. JENNINGS,

Petitioner,

vs.

CRAIG GAMBLE, TSCI Warden; and ROB
JEFFERIES, Director;

Respondents.

8:23CV181

MEMORANDUM AND ORDER

This matter is before the Court on the Motion for Court Progression Order filed by Petitioner, by and through his counsel, Nicole Cavanaugh. [Filing No. 13](#). On November 8, 2023, the Court reviewed Petitioner's pro se amended petition, [Filing No. 9](#), and determined that certain claims, as construed by the Court, were potentially cognizable in federal court. [Filing No. 10](#). The Court also granted Petitioner's request for the appointment of counsel and appointed Ms. Cavanaugh to represent Petitioner. The Court directed Ms. Cavanaugh and counsel for Respondents to confer and file a joint motion suggesting a suitable progression of this case by December 8, 2023. Counsel for Petitioner filed the present motion on December 6, 2023, after conferring with counsel for Respondents, Austin Relph, and asks the Court to progress this matter as set forth in the motion. Upon consideration,

IT IS THEREFORE ORDERED that:

1. The Motion for Court Progression Order, [Filing No. 13](#), is granted.
2. Petitioner must file an amended petition no later than **January 8, 2024**.
3. By **February 8, 2024**, Respondents must file a motion for summary judgment or state court records in support of an answer.

4. If Respondents elect to file a motion for summary judgment, the following procedures must be followed by Respondents and Petitioner:

- A. The motion for summary judgment must be accompanied by a separate brief, submitted at the time the motion is filed.
- B. The motion for summary judgment must be supported by any state court records that are necessary to support the motion. Those records must be contained in a separate filing entitled: "Designation of State Court Records in Support of Motion for Summary Judgment."
- C. Copies of the motion for summary judgment, the designation, including state court records, and Respondents' brief must be served on Petitioner *except* that Respondents are only required to provide Petitioner with a copy of the specific pages of the record that are cited in Respondents' motion and brief. In the event that the designation of state court records is deemed insufficient by Petitioner or Petitioner needs additional records from the designation, Petitioner may file a motion with the Court requesting additional documents. Such motion must set forth the documents requested and the reasons the documents are relevant to the cognizable claims.
- D. No later than 30 days following the filing of the motion for summary judgment, Petitioner must file and serve a brief in opposition to the motion for summary judgment.

- E. No later than 30 days after Petitioner's brief is filed, Respondents must file and serve a reply brief. In the event that Respondents elect not to file a reply brief, they should inform the Court by filing a notice stating that they will not file a reply brief and that the motion is therefore fully submitted for decision.
- F. If the motion for summary judgment is denied, Respondents must file an answer, a designation and a brief that complies with terms of this order. See the following paragraph. The documents must be filed no later than 30 days after the denial of the motion for summary judgment.

5. If Respondents elect to file an answer, the following procedures must be followed by Respondents and Petitioner:

- A. By **February 8, 2024**, Respondents must file all state court records that are relevant to the cognizable claims. See, e.g., Rule 5(c)-(d) of the *Rules Governing Section 2254 Cases in the United States District Courts*. Those records must be contained in a separate filing entitled: "Designation of State Court Records in Support of Answer."
- B. No later than 30 days after the relevant state court records are filed, Respondents must file an answer. The answer must be accompanied by a separate brief, submitted at the time the answer is filed. Both the answer and the brief must address all matters germane to the case including, but not limited to, the merits of

Petitioner's allegations that have survived initial review, and whether any claim is barred by a failure to exhaust state remedies, a procedural bar, non-retroactivity, a statute of limitations, or because the petition is an unauthorized second or successive petition. See, e.g., Rules 5(b) and 9 of the *Rules Governing Section 2254 Cases in the United States District Courts*.

- C. Copies of the answer, the designation, and Respondents' brief must be served on Petitioner at the time they are filed with the Court *except* that Respondents are only required to provide Petitioner with a copy of the specific pages of the designated record that are cited in Respondents' answer and brief. In the event that the designation of state court records is deemed insufficient by Petitioner or Petitioner needs additional records from the designation, Petitioner may file a motion with the Court requesting additional documents. Such motion must set forth the documents requested and the reasons the documents are relevant to the cognizable claims.
- D. No later than 30 days after Respondents' brief is filed, Petitioner must file and serve a brief in response.
- E. No later than 30 days after Petitioner's brief is filed, Respondents must file and serve a reply brief. In the event that Respondents elect not to file a reply brief, they should inform the Court by filing a

notice stating that they will not file a reply brief and that the merits of the petition are therefore fully submitted for decision.

6. No discovery shall be undertaken without leave of the Court. See Rule 6 of the *Rules Governing Section 2254 Cases in the United States District Courts*.

7. The Clerk of the Court is directed to set the following pro se case management deadlines in this case using the following text:

- a. **January 8, 2024:** deadline for Petitioner to file amended petition.
- b. **February 8, 2024:** deadline for Respondents to file state court records in support of answer or motion for summary judgment.
- c. **March 11, 2024:** check for Respondents' answer and separate brief.

Dated this 8th day of December, 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J F Bataillon", with a stylized flourish at the end.

Joseph F. Bataillon
Senior United States District Judge